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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,596	10/19/2001	Mohammad Thudor	1171/39672/106	3006
7590 02/06/2006			EXAMINER	
Trexler, Bushnell, Giangiorgi, Blackstone & Marr, Ltd. 36th Floor 105 West Adams Street Chicago, IL 60603			PAIK, SANG YEOP	
			ART UNIT	PAPER NUMBER
			3742	

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/001,596

Applicant(s)

THUDOR ET AL

Examiner

Sang Y. Paik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 19-23, 25, 28, 29 and 36 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-7, 19-23, 25, 28, 29 and 36 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7, 19-23, 25, 28 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daniell et al (US 5,558,084) in view of Kawai et al (US 4,332,165).

Daniell shows the breathing assistance apparatus claimed having a humidifier, an ambient external temperature sensor (45), a conduit heater (10), and a controller (11, 61) to provide and monitor the electrical input power to the humidifier to produce the humidified gas and to the conduit heater (see Figure 5). However, Daniell does not show the controller determining the parameter, in combination with the input power to the conduit heater, that is indicative of the flow rate of gas through the conduit.

Kawai shows a gas flow measuring device whose gas flow rate is determined by the quantity of the electrical power supplied to the electric heater.

In view of Kawai, it would have been obvious to one of ordinary skill in the art to adapt Daniell with the claimed input power to determine the flow of the gas to better serve the user.

With respect to the claimed steps, while Daniell does not explicitly shows the sequence of the claimed steps, but it would have been obvious to provide the controller with such monitoring processes or steps to monitor the changes in the threshold parameter values, including the changes in the resistance or temperature or other related parameters, so that the

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power to the conduit heater can be adjusted to maintain the desired flow rate as well as the humidity or gas temperature to maintain the optimal humidified gas for the user.

3. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Daniell in view of Kawai as applied to claims 1-7, 19-23, 25, 28 and 36 above, and further in view of McComb (US 5,349,946) or Clementi (US 5,031,612).

Daniell in view of Kawai shows the apparatus claimed except the gas supply means to supply gas to the humidifier.

McComb shows a gas supply with a flow meter/sensor to supply gas and the processor to determine the desired humidity level at the given flow rate. Clementi also shows a gas supply such as a blower to provide the pressured gas flow to provide the desired humidified gas. In view of McComb or Clementi, it would have been obvious to one of ordinary skill in the art to adapt Daniell, as modified by Kawai, with the gas supply means to provide the air source that is humidified for the user and to control the rate at which the air/gas is provided.

Response to Arguments

4. Applicant's arguments filed 11/29/05 have been fully considered but they are not persuasive.

The applicant argues there is no motivation to combine Daniell with Kawai since Kawai does not relate to the medical applications and, even if combined, Kawai does not show using a parameter indicative of the flow rate of gas to control the power supply.

While Kawai does not show using its device in the medical applications, Kawai clearly teaches that a gas flow can be measured in terms of an electrical heater and the associated resistors wherein the voltage potential differences of the resistors would be serve as the

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parameter indicative of the gas flow as heated by the electric heater. The output of the voltage differences would then further control the electrical heater. This clearly shows that it is known to measure the gas flow in terms of power supplied to an electrical heater.

Whether such device is utilized in an area other than the claimed medical applications does not teach away or limit its applications in one particular area as argued by the application. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the art looking at Kawai would have been motivated to use its gas flow measuring device alternative to or in place of the other gas measuring device to better monitor the gas flow without using temperature sensors.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Y. Paik whose telephone number is 571-272-4783. The examiner can normally be reached on M-F (9:00-4:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sang Y Paik
Primary Examiner
Art Unit 3742

syp